Testimony of Witnesses

(a) Summations of direct testimony will take no longer than ten (15) minutes, unless the Commission, in its discretion, allows for a longer period of time.

(b) In the absence of a valid objection being made and sustained, the pre-filed testimony and exhibits, with corrections, will be admitted into the record as if given orally prior to the summation made by witnesses subject to a motion to strike after admission or other relevant objection.

(c) Where the testimony of a panel of witnesses is presented, cross-examination may be addressed either to the panel, in which case any member of the panel may respond, or to any individual panel member, in which case that panel member shall respond to the question.

Rights of the Parties

The parties have the following rights in connection with this hearing:

(1) To respond to the matters asserted in this document and to present evidence on any relevant issue;

(2) To be represented by counsel at its expense;

(3) To subpoena witnesses and documentary evidence through the Commission by filing requests with the Executive Secretary of the Commission; and

(4) Such other rights as are conferred by law and the rules and regulations of the Commission.

WHEREFORE, it is

ORDERED, that the Commission hereby adopts the procedures, schedule, and statements regarding the issues set forth within this Order.

ORDERED FURTHER, that the Commission hereby asserts its authority under Section 271 of the Federal Act to set just and reasonable rates for de-listed unbundled network elements.

ORDERED FURTHER, that at the conclusion of the proceedings the Commission will file with the FCC an expedited petition as described herein.

ORDERED FURTHER, that a motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 17th day of January 2006.

REECE MCALISTER
EXECUTIVE SECRETARY

1-20-06
Date

STAN WISE
CHAIRMAN

1-20-06
Date

H

ISSIONERS:
WISE, CHAIRMAN
IOBERT B. BAKER, JR.
)AVID L. BURGESS
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Docket No. 19341-U

In Re: Generic Proceeding to Examine Issues Related to BellSouth Telecommunication, Inc's. Obligations to Provide Unbundled Network Elements

ORDER SETTING RATES UNDER SECTION 271

I. Statement of Proceedings

A. Jurisdiction

This proceeding was initiated by the Georgia Public Service Commission ("Commission") to amend parties' interconnection agreements consistent with the Federal Communications Commission's ("FCC") *Triennial Review Order*[1] and *Triennial Review Remand Order*[2]. On January 20, 2006, Commission issued its Order Initiating Hearings to Set a Just and Reasonable Rate Under Section 271 ("Order Initiating Hearings"). In that Order, the Commission concluded that it had jurisdiction to set just and reasonable rates for de-listed unbundled network elements and scheduled hearings commencing on February 20 for the purpose of setting just and reasonable rates for de-listed UNEs pursuant to Section 271. (Order Initiating Hearings, pp. 2-5). In its Order Initiating Hearings, the Commission addressed at length the question of jurisdiction.

Under the Federal Telecommunications Act of 1996 (Federal Act), state commissions are also authorized to set terms and conditions for interconnection and access to unbundled elements pursuant to Sections 251 and 252 of the Federal Act. Section 271 compliance is necessary for a regional Bell Operating Company ("BOC") to establish or maintain the right to provide interLATA long distance services. In order to comply with the requirements of Section 271, a BOC must provide access and interconnection pursuant to at least one Section 252 interconnection agreement or be offering access and interconnection pursuant to a Statement of Generally Accepted Terms. 47 U.S.C. § 271(c)(2)(A)(i). In addition, Section 271 requires that

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[1] 18 FCC Rcd 16978, 17145, *corrected by Errata,* 18 FCC Rcd 19020, *vacated and remanded in part, aff'd in part, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) (*"USTA II"), cert. denied,* 125 S. Ct. 313 (2004) (*"TRO").*

[2] *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand, FCC 04-290 (released February 4, 2005) *("TRRO").*

the BOC provide access to unbundled network elements ("UNEs") on the competitive checklist set forth within the statute at just and reasonable rates. 47 U.S.C. § 271(c)(2)(B)(i). The Section 271 competitive checklist items (i) and (ii) make explicit reference to compliance with provisions in Sections 251 and 252. Therefore, the Section 252 agreements are the vehicles through which a BOC demonstrates compliance with Section 271. As such, it is logical to conclude that obligations under Section 271 must be included in a Section 252 interconnection agreement.

By setting rates, the Commission is not enforcing Section 271. The FCC's enforcement authority under Section 271 is clear. Section 271(d)(6) sets forth the actions that the FCC may take if it determines that a BOC has ceased to meet any of the conditions required for approval. The actions that the FCC may take if it finds such non-compliance include the issuance of an order obligating the BOC to correct the deficiency, the imposition of a penalty or the suspension or revocation of such approval. 47 U.S.C. 271(d)(6)(A)(i), (ii) and (iii). First, the Commission is not making a finding that BellSouth has failed to meet any of the conditions for Section 271 approval. Rather, it is setting just and reasonable rates for de-listed unbundled network elements. Second, the Commission is not taking any of the actions included in Section 271(d)(6). The setting of just and reasonable rates does not assume any of the responsibilities that the Federal Act reserves for the FCC under Section 271(d)(6).

In addition to its jurisdiction of this matter pursuant to the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23. Pursuant to state law, the Commission has the jurisdiction to set reasonable rates, terms or conditions for interconnection services. O.C.G.A. § 46-5-164(d).

B. Proceedings

The Commission initiated this docket on August 24, 2004. In its June 30, 2005 Procedural and Scheduling Order, the Commission directed the parties to submit a Joint Issues List. The Commission approved the Joint Issues List submitted by BellSouth Telecommunications, Inc. ("BellSouth") and Competitive Carriers of the South ("CompSouth")[3] along with the issues added by Digital Agent, LLC. (Order on Motion to Move Issues into Generic Proceeding, p. 2).

On July 19, 2005, in accordance with the Procedural and Scheduling Order, direct testimony was pre-filed with the Commission by BellSouth, CompSouth, US LEC of Georgia, Inc., Cbeyond Communications, LLC ("Cbeyond") and Sprint Communications Company LP ("Sprint"). BellSouth, CompSouth, Sprint, Cbeyond, ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") and XO Communications Services filed rebuttal testimony with the Commission on August 9, 2005. Hearings were held before the Commission on August 30

[3] CompSouth is an association of Competitive Local Exchange Carriers.

through September 1, 2005. BellSouth, CompSouth, Sprint and Cbeyond filed briefs with the Commission on October 21, 2005.

In its January 20, 2006 Order Initiating Hearings, the Commission concluded that it had jurisdiction to set just and reasonable rates for delisted unbundled network elements under Section 271 of the Federal Telecommunications Act of 1996. The Commission scheduled hearings, stated that it would petition the Federal Communications Commission ("FCC") for clarification on the jurisdictional issue and stated that it would continue to monitor any case law or FCC decision that would shed additional light on the jurisdictional question. (Order Initiating Hearings, pp. 2-4).

On February 10, 2006, pursuant to the Order Initiating Hearings, prefiled testimony on just and reasonable rates for local switching, high capacity loops and transport and line sharing was filed with the Commission by BellSouth, CompSouth and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"). On February 20 and 21, 2006, the Commission held hearings on this matter. Briefs were filed pursuant to the Order on February 28, 2006. BellSouth filed a brief in which it addressed switching, high capacity loops and transport and line sharing. CompSouth filed a brief that proposed rates for switching and high capacity loops and transport. Covad filed a brief that addressed line sharing, but Covad stated that it supported the positions advanced by CompSouth on the remaining issues.

The Commission considered the issues in dispute at its Special Administrative Session on March 8, 2006. The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

II. FINDINGS AND CONCLUSIONS

The Commission shall revisit each of the rates ordered herein one year from the effective date of this order.

1. Switching

Positions of the Parties

BellSouth

While maintaining its position that the Commission does not have the authority to set just and reasonable rates under Section 271 for switching[4], BellSouth Telecommunications, Inc. ("BellSouth") asks the Commission to confirm that the switching rates contained in its standard commercial agreements are just and reasonable. BellSouth states that it has entered into 200 arms-length agreements with similarly situated carriers. (BellSouth Brief, p. 3). BellSouth also argues that in approving 68 commercial agreements the Commission has already found the

[4] BellSouth maintains this position with regard to all network elements at issue in this stage of the proceeding.

switching rates to be just and reasonable. *Id.* at 8. In making this argument, BellSouth states that the Commission may reject a voluntarily negotiated agreement under 47 U.S.C. § 252(e) if it determines that the agreement is counter to the public interest. *Id.*

CompSouth

CompSouth recommends that the Commission adopt a simplified flat-rate structure for local switching. (Joseph Gillan, Direct Testimony, p. 28). CompSouth recommends a flat rate per analog switch port of $6.86 per month. *Id.* at 31. To arrive at this rate, CompSouth begins with BellSouth's cost estimates and then increases the overhead loading to 20%. *Id.*

Discussion

BellSouth based its argument that the Commission should adopt the commercial agreements for local switching, in part, on its position that the Commission has already concluded that the rates set forth in the commercial agreement are just and reasonable. (Tr. 59). The Commission rejects BellSouth's argument that it approved the rates contained in the commercial agreements because it approved the commercial agreements under 47 U.S.C. § 252(e). For a state commission to reject a voluntarily negotiated agreement, it must determine that the agreement discriminates against a telecommunications carrier not a party to the agreement or that the implementation of such agreement is inconsistent with the public interest, convenience, and necessity. 47 U.S.C. § 252(e)(2)(A). First, the Commission did not state that the rates in the commercial agreements were just and reasonable. Second, that a particular telecommunications carrier may agree to pay wholesale rates above what the Commission would deem just and reasonable may potentially be against that particular carrier's interest, but that does not mean that it is against the public interest, convenience and necessity. Third, even if this Commission were to have concluded that a carrier agreeing to pay BellSouth rates that were not just and reasonable was against the public interest, convenience and necessity (which it did not), the Commission did not have evidence before it at the time the agreements were before it as to what was a just and reasonable rate. Rejection of the agreement requires a finding that the agreement is inconsistent with the public interest, convenience and necessity. Approval of the agreement does not require an affirmative finding that the agreement is consistent with the public interest, convenience and necessity.

BellSouth also relies upon paragraph 664 of the *Triennial Review Order* to support its position that it has demonstrated its proposed local switching rates are just and reasonable by virtue of its entering into numerous commercial agreements that contain these rates. (BellSouth Brief, p. 3). Paragraph 664 of the *Triennial Review Order* states as follows:

> Whether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, a BOC might satisfy this standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated

> purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly-situated purchasing carriers to provide the element at that rate.

The FCC did not state that any BOC that has entered into arms-length agreements with other carriers has demonstrated that its rates are just and reasonable. Rather, it has identified these agreements as a way that a BOC "might" demonstrate that the rates are just and reasonable.

The FCC's *Omaha Forbearance Order*[5] contradicts any notion that merely entering into commercial agreements adequately demonstrates that a rate is just and reasonable. In determining that Qwest did not demonstrate that sufficient facilities-based competition existed to justify forbearance from its wholesale access obligations under Section 271, the FCC expressed its concern that without sufficient competition telecommunications services would not be available to consumers at just, reasonable and nondiscriminatory terms. (*Omaha Forbearance Order,* ¶ 103). The FCC then explained the relationship between a finding of non-impairment and the adequacy of competition.

> When the Commission established its impairment determinations, it did so at a level designed to provide incentives for self-provisioning competitive facilities, rather than based on a finding that in all cases self-provisioning of competitive facilities is economically feasible. As a result, the Commission's impairment determinations necessarily sometimes are under-inclusive. In other words, it sometimes is not feasible for a reasonably efficient competitive carrier economically to construct all of the facilities necessary to provide a telecommunications service to a particular customer despite not being impaired under the Commission's rules without access to such facilities.
>
> *Id.*at ¶ 104 (footnotes omitted)

It is necessary to determine whether the commercial agreements constitute evidence that the rates are just and reasonable.

CompSouth sponsored the testimony of Joseph Gillan. Mr. Gillan testified that those carriers that have entered into commercial agreements are predominantly involved in an exit strategy. (Tr. 207). Mr. Gillan addressed specifically what conclusions can be drawn from the commercial agreements that AT&T and MCI have entered into with BellSouth.

> So what -- what difference does it make that they have convinced AT&T and MCI and all those lines to come into a commercial agreement? It's not part -- it's not part of a strategy by those carriers to continue to serve and compete for those

[5] Federal Communications Commission WC Docket No. 04-223, Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(C) in the Omaha Metropolitan Statistical Area *Memorandum Opinion and Order,* (rel. Dec. 2, 2005) ("*Omaha Forbearance Order*").

> customers; it's part of those carriers' strategies to just harvest some cash as they get out of the marketplace. (Tr. 208).

Mr. Gillan stated further that he was "not aware of anybody who's using the commercial agreement in an attempt to actually survive in the market serving the same customer segment they were competing for originally." (Tr. 209). Mr. Gillan elaborated further in response to questions related to his awareness of the business plans of CompSouth members.

> I've talked to every one of these carriers over a period of several years. Now, I haven't talked to them each about every topic, every day. But I'm generally aware of each of their business strategies, and the reality is when people talk about serving the POTS marketplace that used to be able to be addressed by UNE-P, carriers are not using those commercial agreements to try and succeed in that conventional marketplace. They're either using them as a bridging agreement to get into a different marketplace, or they're fighting you here before they have to sign a bridging agreement. But in terms of actually finding a member who believes that your commercial agreement provides anybody a sustainable business plan in the POTS marketplace, I've never heard a carrier say that was the case. (Tr. 210).

If the commercial agreements do not provide a sustainable business plan, or are only being used by providers as an exit strategy, the rates contained within those commercial agreements cannot be presumed to be just and reasonable.

BellSouth did not provide adequate support for a position that the rates contained in the commercial agreements were just and reasonable. Its witness, Dr. Taylor, testified that he did not know what the rate was that he was proposing as just and reasonable for local switching. (Tr. 75). Nor did BellSouth demonstrate that the commercial agreements were negotiated in the context for a competitive market for switching. Dr. Taylor did not contend that there was a wholesale market for local switching in Georgia; but rather, he based his recommendation on carriers' self-supplied switching. (Tr. 84-85). However, Dr. Taylor also acknowledged that he had not done any analysis of self-supplied switching in Georgia. (Tr. 84-85).

A close examination of the commercial agreements raises serious concerns as to whether the agreements reflect a competitive market. Over 120 of the 175 commercial agreements identified in CompSouth Exhibit 1 involved competitive local exchange carriers ("CLECs") without any lines in Georgia subject to the agreement. (Tr. 154). The majority of the CLECs that have lines under the commercial agreements have experienced a decline in the number of lines subject to the agreement since it was signed. (Tr. 154-55). Further, 170 of the 175 commercial agreements set forth in CompSouth Exhibit 1 were priced at the BellSouth standard rate. This statistic provides a strong indication that the agreements are not resulting from give-and-take negotiation.

BellSouth's witness, William Taylor, discussed the concept of an "equilibrium price." He testified that an equilibrium price is the target for a regulator attempting to set market based rates. (Tr. 62). Dr. Taylor identifies three harms that may result from a rate being set below

equilibrium. Those harms include that it would encourage excessive consumption or inefficient use of the elements, that it would depress the incentive of the supplier to offer the element and that it would distort the decision of the purchasing competitors as to whether to make or buy the element. (Tr. 63). Dr. Taylor testified further that if the Commission were to set a competitive market rate then these harms would not occur. (Tr. 66).

The Commission adopts CompSouth's proposed rates for local switching. CompSouth calculated its proposed rates for switching by using the cost estimates that BellSouth proposed in the context of Docket No. 14361-U, the UNE Cost Docket, as the direct cost for each element. CompSouth then increased the overhead loading to 20%. The record reflects that these rates are just and reasonable. Even by BellSouth's own estimates of its costs, these rates provide BellSouth with revenues well in excess of its costs. Accordingly, the harms that Dr. Taylor discussed should not occur as a result of these local switching rates. Given that the rates are significantly above the cost, there is no evidence to suggest that the Commission order on this issue will encourage excessive consumption or inefficient use of the elements. Further, there is no reason to conclude that a rate that compensates BellSouth significantly in excess of its costs would depress its incentive to offer more of the element. Finally, given that the rates are substantially above what the Commission determined to be BellSouth's costs, there is nothing in the record to reflect that the rates proposed by CompSouth would result in providing competitive local exchange carriers with a distorted incentive to buy instead of make.

The parties do not appear to dispute that BellSouth must offer local switching at just and reasonable rates. In fact, paragraph 664 of the *Triennial Review Order,* upon which BellSouth relies, expressly references the just and reasonable pricing standard. In *Verizon v. FCC,* 535 U.S. 467, 487, (2002), the United States Supreme Court noted that the "enduring feature of ratesetting" was that "calculating a rate base and then allowing a fair rate of return on it was a sensible way to identify a range of rates that would be just and reasonable to investors and ratepayers." The methodology employed by CompSouth is consistent with this principle. Mr. Gillan testified that the methodology he used was "basically the new services methodology." (Tr. 270). Dr. Taylor acknowledged that the "new services methodology" is an established methodology for determining just and reasonable rates. (Tr. 84).

The Commission concludes that the methodology employed by CompSouth is supported both by the evidence in the record and precedent and the rates that result from CompSouth's methodology are just and reasonable.

2. High Capacity Loops and Transport

Positions of the Parties

BellSouth

BellSouth argues that the Commission should confirm that its tariffed offerings for high-capacity loops and transport are just and reasonable. (BellSouth Brief, p. 12). BellSouth again relies upon paragraph 664 of the *Triennial Review Order.* This paragraph states, in relevant part, that a Bell Operating Company (BOC) "might satisfy [the just and reasonable pricing] standard

by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated purchasing carriers under its interstate access tariff."

CompSouth

For local loops, CompSouth proposes that the Commission adopt the following rates:

Loop Network Elements	TELRIC	CompSouth §271	Increase
Local Loops			
4-Wire DS1 Digital Loop - Zone 1	$49.41	$85.97	74%
4-Wire DS1 Digital Loop - Zone 2	$52.55	$81.27	55%
4-Wire DS1 Digital Loop - Zone 3	$68.40	$128.28	88%
High Capacity DS3 Loop – Facility Termination	$258.44	$323.53	25%
High Capacity DS3 Loop - Per Mile	$11.40	$13.47	18%

For multiplexing CompSouth proposes that the Commission adopt the following rates:

Loop Network Elements	TELRIC	CompSouth §271	Increase
Multiplexing			
Channelization - Channel System DS3 to DS1	$124.39	$157.48	27%
Interface Unit - Interface DS3 to DS1	$7.50	$9.50	27%

For transport, CompSouth proposes that the Commission adopt the following rates:

Transport Network Element	TELRIC	CompSouth Proposed §271	Increase
DS1			
Termination	$34.93	$44.04	26%
Per Mile	$0.1199	$0.1417	18%
DS3			
Termination	$349.42	$440.53	26%
Per Mile	$2.63	$3.11	18%

In arriving at these proposed rates, similar to its approach with local switching, CompSouth adopted BellSouth's own model results as the estimate of direct cost and then increased the contribution to shared/common/overhead costs to 20% for each element.

Discussion

The Commission's analysis of a just and reasonable rate for high capacity loops and transport again requires it to consider paragraph 664 of the *Triennial Review Order.* This paragraph states that a BOC "might" demonstrate that its rates meet Section 271's just and reasonable standard if it shows that the rate for the Section 271 element is at or below its interstate access tariff. It does not state that a BOC that offers a Section 271 element at or below its interstate access tariff has definitely met this standard.

Moreover, in the *TRRO,* the FCC concluded that "the record is decidedly mixed on whether particular competitive LECs that have relied on special access have been able economically to enter all markets. Furthermore, given the absence of widespread competition in the local exchange market, there is insufficient record evidence to conclude that special access-based competition, to the extent it exists is sustainable, enduring competition." (*TRRO,* n.. 180). The FCC went on to state as follows:

> It would be a hideous irony if the incumbent LECs, simply by offering a service, the pricing of which falls largely within their control, could utterly avoid the structure instituted by Congress to, in the words of the Supreme Court, "give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents' property."
>
> *Id.* at ¶ 59.

The FCC has recognized that rates that are in special access tariffs do not necessarily reflect competition or provide competitors with the appropriate incentives.

The structure of the Federal Act also leads to the conclusion that a BOC simply offering loop and transport under the terms of its special access tariff does not demonstrate compliance with its Section 271 obligations. Section 251(g) requires that local exchange carriers provide the same exchange access services that they were providing on the date the Federal Act was enacted. In addition, Section 271 imposed the separate obligation of the competitive checklist on BOCs. There would be no need for the separate loop and transport obligations set forth in Section 271(c)(2)(B) if the obligations were identical to what was already set forth in Section 251(g).

Further, the FCC has stated that because most special access arrangements are used to provide service in the mobile wireless and long distance markets, they do not reflect upon the state of the local exchange market. (*TRRO,* ¶ 664). The FCC continued to state that "carriers make only limited use of special access offerings to provide service in the local exchange services market." *Id.* Therefore, approval of the special access tariffs does not translate into a finding that a BOC may satisfy its Section 271 obligations by offering high capacity loops and transport pursuant to them, absent any showing that doing so constitutes a just and reasonable rate.

Based on the Federal Act and the relevant orders of the FCC, the Commission concludes that BellSouth must provide support for why its special access tariffs constitute just and reasonable rates for high capacity loops and transport. BellSouth did not do so. As was the case

with local switching, BellSouth's witness could not identify the specific tariffed rates BellSouth asks this Commission to adopt. (Tr. 74-75). As with switching, CompSouth applied its two step process to develop just and reasonable rates for loops and transport. The Commission again concludes that the methodology results in just and reasonable rates. As with switching, CompSouth's proposed rates provide BellSouth with revenues well in excess of its own estimation of its costs.

The Commission adopts CompSouth's proposed rates for high capacity loops and transport.

3. Line Sharing

Positions of the Parties

BellSouth

BellSouth urges the Commission to adopt its line sharing rates as just and reasonable. Because this is the third year of the transition for line sharing rates laid out in the *Triennial Review Order,* the current recurring line sharing rate is $8.27. (BellSouth Brief, p. 16). Beginning October 2, 2006, the full loop rate for an unbundled copper loop in zone 1 in Georgia is $11.02. *Id.* BellSouth's proposed recurring rate of $9.75 is less than the full loop rate for an unbundled copper loop in Georgia, yet above the rate for the final year of the transition. *Id.* at 16-17. BellSouth also argues that the Commission should apply the just and reasonable rate it sets in this proceeding retroactively to October 2, 2004. *Id.* at 17.

Covad

Covad calculated its nonrecurring rates by averaging the non-zero nonrecurring UNE rates in the BellSouth region in the seven states where it does business. (Covad Brief, p. 2). By eliminating the zero rates from its calculation, Covad eliminated the biggest difference between a Section 271 rate and a TELRIC rate. *Id.* Covad based its proposed recurring rates for line sharing on voluntarily negotiated rates. *Id.* at 4-5. In addition to criticizing the lack of support for BellSouth's proposed rates, Covad asserted that BellSouth itself based its proposal on the TELRIC UNE rate for the whole loop. *Id.* at 3. "Exhibit A" to Covad's testimony, which is displayed below, includes the average of the non-zero rates:

	CATEGORY	NOTES	Market Based Element	RATES					
					Nonrecurring		Nonrecurring		
							Disconnect		
COST ID				Rec	First	Add'l	First	Add'l	Source

	MARKET BASED								
		CENTRAL OFFICE BASED LINE SHARING							
			Line Sharing Splitter - per Splitter System 96-Line Capacity in the Central Office w/o Test Jack	$117.18	$243.66	$0.00	$90.11	0.00	MR
			Line Sharing Splitter - per Splitter System 24-Line Capacity in the Central Office w/o Test Jack	$29.30	$243.66	$0.00	$90.11	0.00	MR
			Line Sharing Splitter - per Splitter System 8-Line Capacity in the Central Office w/o Test Jack	$9.77	$243.66	$0.00	$90.11	0.00	MR
			Line Sharing Splitter - per Splitter Port in the Central Office w/o Test Jack	$1.22	$10.15	$0.00	$3.75	0.00	MR
			Line Sharing – per Line Activation in the Central Office	$3.28	$24.53	$0.00	$12.26	0.00	MR
		LOOP MODIFICATION							
			Unbundled Loop Modification - Load Coil / Equipment Removal		$29.97	$0.00	$0.00	$0.00	MR
			Unbundled Loop Modification - Bridged Tap Removal		$68.11	$0.00	$0.00	$0.00	MR
		MAINTENANCE							
			No Trouble Found - per 1/2 hour increments – Basic		$80.00	$0.00	$0.00	$0.00	MR
			No Trouble Found - per 1/2 hour increments - Overtime		$120.00	$0.00	$0.00	$0.00	MR
			No Trouble Found - per 1/2 hour increments - Premium		$160.00	$0.00	$0.00	$0.00	MR

Discussion

The Commission declines to adopt the loop rate proposed by either BellSouth or Covad. BellSouth did not provide adequate support for its proposed rate. The record reflects that BellSouth's proposed rate is substantially above the rates produced in Covad's commercial agreements for line sharing in other states. (Covad Exhibit 2). BellSouth does not explain why its higher rate would be just and reasonable given this evidence.

Covad, on the other hand, has proposed a line sharing loop rate that is below the rates that it has agreed to pay in the context of agreements with other carriers. (BellSouth Brief, p. 17). Further, the record reflects that Covad's proposal is based on an offer in the context of

negotiations and was not a stand alone offer. (Tr. 123). Accordingly, the Commission finds that the offer should not be considered in the determination of the line sharing loop rate.

Instead, the Commission adopts a loop rate of $6.50. This rate reflects the average of the highest rates contained in the agreements Covad has entered into with other ILECs. These rates were contained in Covad's Exhibit 2. This analysis is consistent with Covad's stated premise of reviewing the rates arising from voluntary negotiations; however, it excluded from consideration an offer made in the context of unsuccessful negotiations. There is no basis for considering that offer, when the remainder of prices that the Commission averaged resulted from finalized agreements. The Commission adopts the remainder of Covad's proposed recurring rates.

The evidence Covad provided that its proposed nonrecurring rates are the average of the non-zero rates for line sharing in the seven states within the BellSouth region in which it does business is persuasive. The general approach of eliminating the non-zero rates for line sharing is effective in transitioning from a Section 251 to a Section 271 rate. BellSouth did not provide support for why its proposed nonrecurring line sharing rates are just and reasonable. The weight of the evidence supports adoption of Covad's proposed recurring and nonrecurring rates for line sharing, except for the loop rate.

Finally, the Commission rejects BellSouth's proposal that the rate be made retroactive to the beginning of the transition period. Instead, the Commission concludes that the rate should be effective on October 2, 2006, which is the end of the transition period. It would be unfair to apply a rate retroactively when parties did not have notice that such an action would be taken.

III. CONCLUSION AND ORDERING PARAGRAPHS

The Commission finds and concludes that the issues that the parties presented to the Commission should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251, 252 and 271 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995 and O.C.G.A. §§ 46-2-20, 46-2-21 and 46-2-23.

WHEREFORE IT IS ORDERED, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that, consistent with Commission Rule 515-2-1-.03(2), this order shall be effective from the date it is signed. Parties may avail themselves of the rates contained herein for local switching and high capacity loops and transport as of March 11, 2006. Parties may avail themselves of the rates contained herein for line sharing as of October 2, 2006.

ORDERED FURTHER, that the Commission will revisit the rates contained herein one year from the effective date of this order.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Special Administrative Session on the 8th day of March, 2006.

Reece McAlister
Executive Secretary

3-10-06
Date

Stan Wise
Chairman

3-10-06
Date

Georgia Public Service Commission

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Docket No. 19341-U

In Re: Generic Proceeding to Examine Issues Related to BellSouth Telecommunication, Inc's. Obligations to Provide Unbundled Network Elements

ORDER ON RECONSIDERATION

I. Proceedings

On January 20, 2006, the Georgia Public Service Commission ("Commission") issued its Order Initiating Hearings to Set a Just and Reasonable Rate Under Section 271 ("Order Initiating Hearings"). In that Order, the Commission concluded that it had jurisdiction to set just and reasonable rates for de-listed unbundled network elements and scheduled hearings commencing on February 20, 2006 for the purpose of setting just and reasonable rates for de-listed UNEs pursuant to Section 271. (Order Initiating Hearings, pp. 2-5). On March 10, 2006, after holding hearings and receiving evidence and arguments of counsel, the Commission issued its Order Setting Rates Under Section 271 ("Order Setting Rates"). In the Order Setting Rates, the Commission set just and reasonable rates for unbundled local switching, high capacity loops and transport and line sharing.

The Commission adopted the rates proposed by the Competitive Carriers of the South for local switching and high capacity loops and transport. (Order Setting Rates, pp. 3-9). For the line sharing loop, the Commission adopted a loop rate of $6.50. *Id.* at 12. This figure reflects the average of the highest rates contained in the agreements Covad Communication Company has entered into with incumbent local exchange carriers. *Id.* The Commission adopted the remainder of Covad's proposed recurring and non-recurring rates for line sharing. *Id.*

II. Proceedings

As set forth in more detail in its prior orders in this docket, the Commission has jurisdiction over these matters pursuant to Sections 251, 252 and 271 of the Federal Telecommunications Act of 1996, Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23. Pursuant to state law, the Commission has the jurisdiction to set reasonable rates, terms or conditions for interconnection services. O.C.G.A. § 46-5-164(d).

III. Discussion

The Commission reconsidered the matter at its March 21, 2006 Administrative Session. On reconsideration, the Commission voted not to set a rate for local switching, but did not alter the rates it set for high capacity loops and transport and line sharing. Nothing in this decision alters the Commission's prior determinations regarding its authority to set just and reasonable rates for de-listed network elements under Section 271. Rather, the Commission concludes that it is more appropriate not to set a just and reasonable rate for local switching at this time. Therefore, as of the effective date of this order, BellSouth Telecommunications, Inc. ("BellSouth") shall be able to transition the Unbundled Network Element Platform ("UNE-P") arrangements of competitive local exchange carriers to resale or other arrangements negotiated by the parties.

* * * * *

WHEREFORE IT IS ORDERED, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that the Commission reconsiders the rates set for local switching in its Order Setting Rates, and will not to set a rate for local switching at this time. As of the effective date of this order, BellSouth shall be able to transition the UNE-P arrangements of competitive local exchange carriers to resale or other arrangements negotiated by the parties.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Special Administrative Session on the 21st day of March, 2006.

Reece McAlister
Executive Secretary

3-24-06
Date

Stan Wise
Chairman

3-24-06
Date